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August 6, 1999

HAND DELIVERED

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.,
Washington, D.C. 20554

Re: CC Docket No. 96-45, CC Docket No. 97-160

Dear Ms. Salas:

Transmitted herewith, on behalf of the Rural Telephone Coalition (RTC), are an original and six copies of its reply comments in the above-referenced proceedings.

In the event of any questions concerning this matter, please communicate with this office.

Very Truly Yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
Forward Looking Mechanism for High Cost Support for Non-Rural LECs	)	CC Docket No. 97-160
	)	

REPLY COMMENTS OF THE RURAL TELEPHONE COALITION

The Rural Telephone Coalition (RTC) submits these reply comments in response to comments filed on the "Other Issues Related to the High Cost Mechanism " in the Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceeding. The RTC has limited its comments and reply comments to the few issues that relate to rural telephone companies in this FNPRM on inputs for the proxy model the Commission is attempting to finalize for non-rural companies. The RTC is relying on the Commission's commitment that it will evaluate the many issues raised by proposals to reform its universal service program for rural carriers in the separate proceeding it has promised to open later, after recommendations by the Rural Task Force to the Universal Service Joint Board and subsequent recommendations from the Joint Board to the Commission.

With respect to the issues that apply to rural telephone companies, the RTC urges the Commission to (a) minimize rural carriers' burdens by using publicly available Census Bureau

and company information in applying the statutory criteria for a "rural telephone company" and eliminating the requirement for annual certification as a rural telephone company, except when a company's status has changed, (b) continue to use the statutory definition of "rural telephone company" to define the rural carriers for which it has promised separate consideration that takes into account the different characteristics of small and low density carriers, and (c) maintain the long-established distinction between a "holding company" and its "operating" affiliates, companies, study areas and other such entities in applying the "rural telephone company" definition.

The Commission Should Not Require Certification as a "Rural Telephone Company" by a Company That Has Already Provided Certification Unless Its Status Changes

Parties that commented on the Commission's proposal to relax the requirement for annual recertification that a company is a "rural telephone company" for at least companies that qualify because they serve less than 100,000 access lines were unanimous in supporting the proposal (USTA at 5; GVNW at 2) or going further to advocate abandoning redundant certification requirements for more -- or all -- rural telephone companies (RTC at iii; Century at 7-8; TXU at 6; USTA at 6). The correct reasoning that emerges from the comments is that the Commission has no need for additional certification every year by a carrier that has already certified that it is a "rural telephone company" under the statutory definition. As long as a carrier that has established its status as a rural telephone company informs the Commission when its status or the

criterion on which it relies has changed and certifies that it satisfies the definition under another of the four alternative criteria if it remains a rural telephone company, repetitive certifications do nothing but squander the time and resources of the Commission and rural carriers.

Both of the access line count criteria in the definition of rural telephone company – service to fewer than 50,000 lines in part (B) or to a study area with fewer than 100,000 lines in part (C) of the statutory definition – are easily verifiable, as the Commission has recognized and commenting parties confirm. Further, the standard in the first criterion, part (A) of the definition, which uses Census Bureau information, reflects the reasonably simple and verifiable density standard used for years in the Commission's former rule exempting qualified rural carriers from the ban on commonly-owned cable and telephone companies. Moreover, commenting parties supported using Census Bureau information to answer the FNPRM's question on how to define the term "community" in criterion (D) of the statutory definition (RTC at iii; Citizens at p. 7; Commonwealth at p. 6; Century at 6-7; TXU at 4-5), the criterion which includes in the definition any local exchange carrier operating entity with less than 15% of its access lines "in communities of 50,000 or more" on the date the 1996 Act was enacted. The RTC agrees that Census Bureau information that identifies localities -- regardless of whether they are incorporated or not – should be used. Once appropriate Census Bureau categories have been chosen to identify "communities" for the purposes of this criterion, application of this part of the definition will also rely on verifiable publicly available information about the company and the area it serves. And, once the specified information has been used a first time to support a

carrier's certification that it qualifies under this prong of the four-part definition, there is no reason to require further certification at all because its status is fixed as of the date certain in the statutory definition and, consequently, cannot change.

Since the information that shows whether a company fits under whatever criterion it relies upon – the area it serves or its study area and the number of access lines served or Census Data about the localities within that area – is publicly available, there is no point in repetitive certification. The Commission and any interested party will have notice when the basis for qualification changes or the company ceases to qualify by means of the mandatory status-change filings. The Commission should therefore eliminate its requirement for annual certification by any already-certified company unless its status changes or it decides to rely on a different criterion from its earlier certification.

The Commission Should Continue to Use the Act's "Rural Telephone Company" Definition For Universal Service Purposes

Commenting parties were unanimous in urging the Commission to continue to use the statutory definition of "rural telephone company" for universal service purposes. Commonwealth pointed out (pp.2-4) that the Commission has used the definition for the sake of uniformity in a number of other contexts where it needed to distinguish rural companies, and should not depart from that precedent at this point for its universal service programs. USTA further explains (pp. 7-8) that the definition has provided the basis for distinguishing companies that are different from non-rural companies. Century suggests (p.6) that a change in a company's classification as

rural at this stage of the proceedings would unfairly disrupt the reasonable expectations of companies that have been classified as rural for universal service purposes throughout the Commission's implementation of section 254.

The RTC explained that the definition plays both a universal service and a competition policy role in the 1996 Act and reflects the small size and/or low density characteristics which are responsible for the higher costs of rural service. And, since the proceedings to date have excluded rural company issues from consideration, it would be a gross miscarriage of justice to shift any currently certified rural companies into the non-rural group. Otherwise, the sudden reclassification will subject those carriers to the imminent results of the non-rural carrier proceeding, although they have been denied the opportunity to participate as members of the affected group in shaping the rules that will govern non-rural company universal service mechanisms. The Fifth Circuit recently upheld the Commission's decision to apply a different standard to rural carriers because the Commission has found that no model has been developed for this industry segment and "these companies will have greater difficulty adjusting to a new system."[1] In short, fundamental fairness and due process obligate the Commission not to "change horses in mid-stream," and, instead, to stay with the wise choice the FNPRM recognizes (para. 244) the Commission made in 1997 to bifurcate these proceedings on the basis of the definition of rural telephone company that Congress enacted.

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[1] Texas Office of Public Utility Counsel, et al. v FCC, (5th Cir. Case No. 97-60421, decided July 30, 1999) (Texas PUC). slip. op. at 85.

The Commission Should Maintain the Long-Established Distinction Between a Holding Company and Its Operating Subsidiaries

Virtually all parties that commented on the "operating entity" issue, with the exception of a joint AT&T and MCI filing, are unanimous that the term cannot reasonably be read to mean a holding company that conducts its local exchange operations through separate corporate operating companies or study areas. USTA explains, for example, (p. 7) that a holding company is neither a carrier nor subject to the Commission's rules. Century also points out that the "to the extent" language in the Act's definition supports the reading that some of a carrier's study areas but not others may qualify.

Several commenting parties advocate viewing the "study area" as the "operating entity," while others, such as the RTC (pp. 7-10) and Citizens (p. 5) indicate that the statutory language supports using "operating company" as the definition for an "operating entity." Although the Commission stated the choices for interpreting "operating entity" only as "study area" vs. "holding company," the term "operating entity" is plainly broader than the more commonly used "operating company," and can reasonably be read to apply to either or both the study area and the traditional "operating company." In the majority of cases, there will not be a practical difference as the result of reading "entity" to mean the corporate or legal operating entity or the entity used for ratemaking, accounting, jurisdictional separations and other regulatory purposes. As the RTC's opening comments demonstrated (pp. 8-10), the traditional regulatory distinction has been between a "holding" entity (parent) and an "operating" company or other entity, but the RTC recognizes that the "study area" interpretation is also reasonable. The crucial point is that the "operating" entity cannot rationally be interpreted to mean the "holding" entity.

AT&T and MCI seize on the FNPRM's question to advocate forsaking the normal and established "holding" vs. "operating" distinction to interpret "operating entity" as synonymous with "holding company." The comments reveal that AT&T and MCI are well aware that their interpretation departs from what the statutory language says. They speak (p. 51) of "aggregat[ing]" a holding company's "operations" within a state, thus tacitly conceding that the holding company's "operations" would otherwise be understood to be measured on a disaggregated basis -- that is, as more than one "operating entity." Because the operating entities – whether defined as the legal entities or study areas – are currently separate, moreover, AT&T and MCI suggest (ibid.), in the guise of a recommended interpretation of the definition, that a holding company should not only have to "combin[e]" these separate "operations" into a single study area, but should also be prevented from "devising" separate corporate structures. Nothing in the 1996 Act, however, even hints that Congress intended its rural telephone company definition to change the current structure of the local exchange industry or long-established public utilities usage of the term "operating." Thus, rather than explaining what the statutory definition means, AT&T and MCI seek to change the fact of separate operations to eliminate the holding-company/operating entity distinction the definition recognizes.

Their effort to change the real world to conform to a definition they would prefer must also fail for reasons that go beyond the language of the statute and the traditional understanding of "operating." For one thing, the study areas AT&T and MCI want to consolidate to manipulate the statutory definition have long been frozen in the Appendix to Part 36 at their 1984

boundaries, unless a waiver is granted. Indeed, section 214(e)(5) codifies the existing study areas as the "service areas" of rural telephone companies "for the purpose of determining universal service obligations and support mechanisms," unless changed by a joint board process. Far from conducting such a process to consolidate study areas, the Commission has, at most, "encouraged" states to consolidate non-contiguous parts of commonly owned study areas in a state, which the Fifth Circuit noted recently is subject to state veto.[2] Congress clearly could not have intended that its "rural telephone company" definition would require the consolidation of corporate or study area "operating entities" into a single holding-company-wide "entity," when it maintained rural study areas as they were at the time of enactment, unless duly modified later. The Commission should read "operating" entity in the rural telephone company definition as expressing the traditional public utility distinction from the "holding" entity and reject AT&T's and MCI's demand to reshape the industry by twisting Congress's rural telephone company definition.

Conclusion

For these reasons and the reasons the RTC and other parties provided in their opening comments, the Commission should abandon unnecessary redundant certification requirements for all four types of rural telephone companies, retain the rural carrier definition that all companies

[2] Texas PUC, slip. op. at 35-36.

have relied on since the Commission's initial universal service decision and refuse to confuse any public utility's "operating" entity – whether measured at the legal corporate level or the (often-identical) accounting study area level – with its non-carrier "holding company" parent entity.

Respectfully submitted,

THE RURAL TELEPHONE COALITION

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August 6, 1999

CERTIFICATE OF SERVICE

I, Victoria C. Kim, of Koteen & Naftalin, hereby certify that true copies of the foregoing Reply Comments of the Rural Telephone Coalition, CC Docket Nos. 96-45 and 97-160, have been served on the parties listed below, via first class mail, postage prepaid on the 6th day of August 1999.

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